

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

**WILLIAM D. MCCLUSKEY, as Surviving
Spouse and as Personal Representative of the
Estate of MARY L. MCCLUSKEY, deceased,**

PLAINTIFF,

v.

**MERCK & CO., INC., a foreign
Corporation, et al.,**

DEFENDANTS.

CASE NO. CV-06-07108

MOTION TO DISMISS DEFENDANT JAMES A. STEWART

COMES NOW, the Plaintiff, William D. McCluskey, as surviving spouse and as personal representative of the Estate of Mary L. McCluskey, by and through his counsel of record, and respectfully requests this Court, pursuant to Rule 41(a), Ala.R.Civ.P., to dismiss claims against James A. Stewart, without prejudice. As of the time of filing this motion to dismiss, no answers to the complaint have been filed.

Respectfully submitted this the 8th day of January, 2007.


ANDY D. BIRCHFIELD, JR. (BIR006)
BENJAMIN L. LOCKLAR (LOC009)
W. ROGER SMITH, III (SMI257)
Attorneys for Plaintiff

OF COUNSEL:

**BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.**

Post Office Box 4160
Montgomery, Alabama 36103-4160
Phone: (334) 269-2343
Fax: (334) 223-1236

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the parties as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 8th day of January, 2007.

Alan T. Hargrove, Jr.
Mike Brock
F. Chadwick Morriss
**RUSHTON, STAKELY, JOHNSTON
& GARRETT, P.A.**
Post Office Box 270
Montgomery, Alabama 36101-0270

James A. Stewart
1832 Seneca Road
Birmingham, Alabama 35216


OF COUNSEL